

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 11, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08KD-089

Kauai

After-the-Fact Issuance of a Revocable Permit to Kapaa Poi Factory, Inc. for the Operation of a Poi Factory and Processing Facilities for Other Agricultural Products, Waipouli, Kawaihau, Kauai, Tax Map Key: (4) 4-4-04: 43

APPLICANT:

Kapaa Poi Factory, Inc., a Hawaii corporation whose business and mailing address is 1181 Kainahola Road, Kapaa, Hawaii 96746.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waipouli situated at Waipouli, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-4-04: 43, as shown on the attached map labeled EXHIBIT A.

AREA:

3.00 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Agricultural
County of Kauai CZO:	Agricultural

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Previously encumbered by General Lease No. S-4398, Kapaa Poi Factory, Inc., Lessee, for the operation of a poi factory and processing facilities for other agricultural products, with one (1) permitted employee dwelling purposes. Lease expired on December 19, 2008.

CHARACTER OF USE:

Operation of a poi factory and processing facilities for other agricultural products purposes.

COMMENCEMENT DATE:

December 20, 2008.

MONTHLY RENTAL:

\$1,353 per month, based on staff appraisal dated February 25, 2010 attached as EXHIBIT B.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

BACKGROUND:

The Department on March 8, 1932 conducted a public auction for a 15-year lease covering 129 acres. General Lease No. 2250 was issued to Mr. Fred W. Wichman starting March 8, 1932.

The Department on September 10, 1946 conducted a public auction for a 21-year lease covering 92.50 acres. General Lease No. 3173 was issued to Mr. Peter Nyuk Heong Hew starting March 8, 1947. Although not stated in the lease the tenant was utilizing the property

for pasture, poi factory and home site.

The Land Board at its meeting of April 11, 1968, authorized the issuance of a month-to-month revocable permit to Mr. Kenneth Lai for 3 acres to be used for business-residence. A building was used for the manufacturing of poi and tofu. A house was occupied by Mr. Lai. Revocable Permit No. S-4160 was issued to Kenneth Lai starting March 8, 1968.

The Land Board at its meeting of November 21, 1969, under agenda Item F-26, authorized the public auction of a 35-year lease for business-residence purposes covering 3 acres. Later, the Land Board at its meeting of October 26, 1973, under agenda Item F-19 amended its action of November 21, 1969 by changing the lease purpose to 'operation of a poi factory and processing facilities for other agricultural products.' Subsequently, the Land Board at its meeting of November 16, 1973, under agenda Item F-25, amended its action of November 21, 1969 by expanding the lease purpose to 'with provision for employee housing as follows: one (1) only single-family dwelling shall be allowed on the premises to be utilized for employee housing. That the Lessee shall not at any time construct, place, maintain and install on the premises any additional building, structure or improvements of any kind and description whatsoever without the prior approval of the Board.' The Department on December 20, 1973 conducted a public auction for a 35-year lease. The successful bidder was Kapaa Poi Factory, Inc. General Lease No. S-4398 was issued starting December 20, 1973.

By letter dated April 10, 2008, Ms. Susan Y. Pang, Vice President of Kapaa Poi Factory requested an extension of General Lease No. S-4398. Staff received a Business Credit Application for Kapaa Poi Factory on December 2, 2008 to support the extension of the lease.

Unfortunately, upon closer examination, this lease's character of use: operation of a poi factory and processing facilities for other agricultural products, with one (1) permitted employee dwelling purposes makes it very difficult to qualify for an extension under Section 171-36(b), Hawaii Revised Statutes which states, as follows:

(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

- (1) Modify or eliminate any of the restrictions specified in subsection (a);
- (2) Extend or modify the fixed rental period of the lease; or
- (3) Extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an

independent appraiser; provided that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening;
- (4) Any federal or private lending institution shall be qualified to do business in the State;
- (5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
- (7) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

REMARKS:

Kapaa Poi Factory, Inc. has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Kapaa Poi Factory, Inc. has been producing taro products such as poi and kulolo. Due to the shortage and high cost of taro they are producing only kulolo. To survive Kapaa Poi Factory Inc. also manufactures tofu. Presently they are the only company that makes tofu on the Island of Kauai and supplies tofu to 90% of the markets including Safeway, Foodland and Big Save. Therefore, Kapaa Poi Factory, Inc. would qualify as a bona fide farmer pursuant to §171-14.5, HRS.

Kapaa Poi Factory, Inc. is asking the Land Board to reduce the monthly rent from fair market to something they can afford. In a letter dated April 28, 2009, Ms. Susan Pang, Vice President explained that the revenue for Kapaa Poi Factory is currently in a 5 year downward trend. Cost of sales (taros, soybeans, etc.) is at 30%, while rising operating expenses (wages, taxes, insurance, fuel, utilities, etc.) are 70%. EXHIBIT C

On December 21, 2009, a draft Board submittal was send to Kapaa Poi Factory. In a letter dated December 29, 2009, Mr. Rankin H. Pang, President of Kapaa Poi Factory objects to the 1667% rent increase. They manufacture products for the people of Hawaii, using exclusively Kauai taro, bought and transported from local farmers, sugar from Maui and other ingredients and materials purchased from Hawaii companies. They have serviced Kauai and Oahu for decades. They are the only manufacturer of tofu on Kauai, and the largest manufacturer of kulolo in the State. EXHIBIT D.

Originally, the Staff Appraiser determined the monthly rent to be \$2,300. The analysis was done without an interview of the tenant by our Kauai staff. Based on Mr. Pang's December 29, 2009 letter, the Staff Appraiser was instructed to call the tenant to verify the fact that the dwelling was not used for employee housing and instead used for storage. Therefore, the Staff Appraisers' analysis (EXHIBIT B) is based on the fair market rent for: dwelling used as storage (\$418/month) and factory facilities (\$953/month) which are now improvements owned by the State when General Lease No. S-4398 expired on December 19, 2008. This monthly rent is fair and reasonable.

Comments were solicited from:

Department of Agriculture	No other comments.
Department of Health	No comments received.
Historic Preservation	No comments received.
Office of Hawaiian Affairs	No comments received.

County of Kauai:

Department of Planning	No objections.
Department of Water	No comments received.
Department of Public Works	No comments. We recommend comments solicited from our Flood Plain Coordinator.

Unfortunately, Hawaii Revised Statutes clearly requires the Department to receive fair market rent. The Department of Agriculture (DOA) may be more flexible towards agricultural tenants in good standing. Discussions will continue between the 2 departments to determine if this property and tenant can be transferred to DOA pursuant to Act 90, SLH 2003. In the meantime, staff is recommending the month-to-month rent be \$1,353 and the issuance of a new month-to-month revocable permit to Kapaa Poi Factory, Inc.

Since the expiration of General Lease No. S-4398 on December 19, 2008, the tenant has been paying \$415 per quarter or \$1,660 per annum. Arguably, both sides are responsible for the delay in bringing this matter to the Land Board.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to Kapaa Poi Factory Inc. covering the subject area for the operation of a poi factory and processing facilities for other agricultural products purposes under the terms and conditions cited above, which are

by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

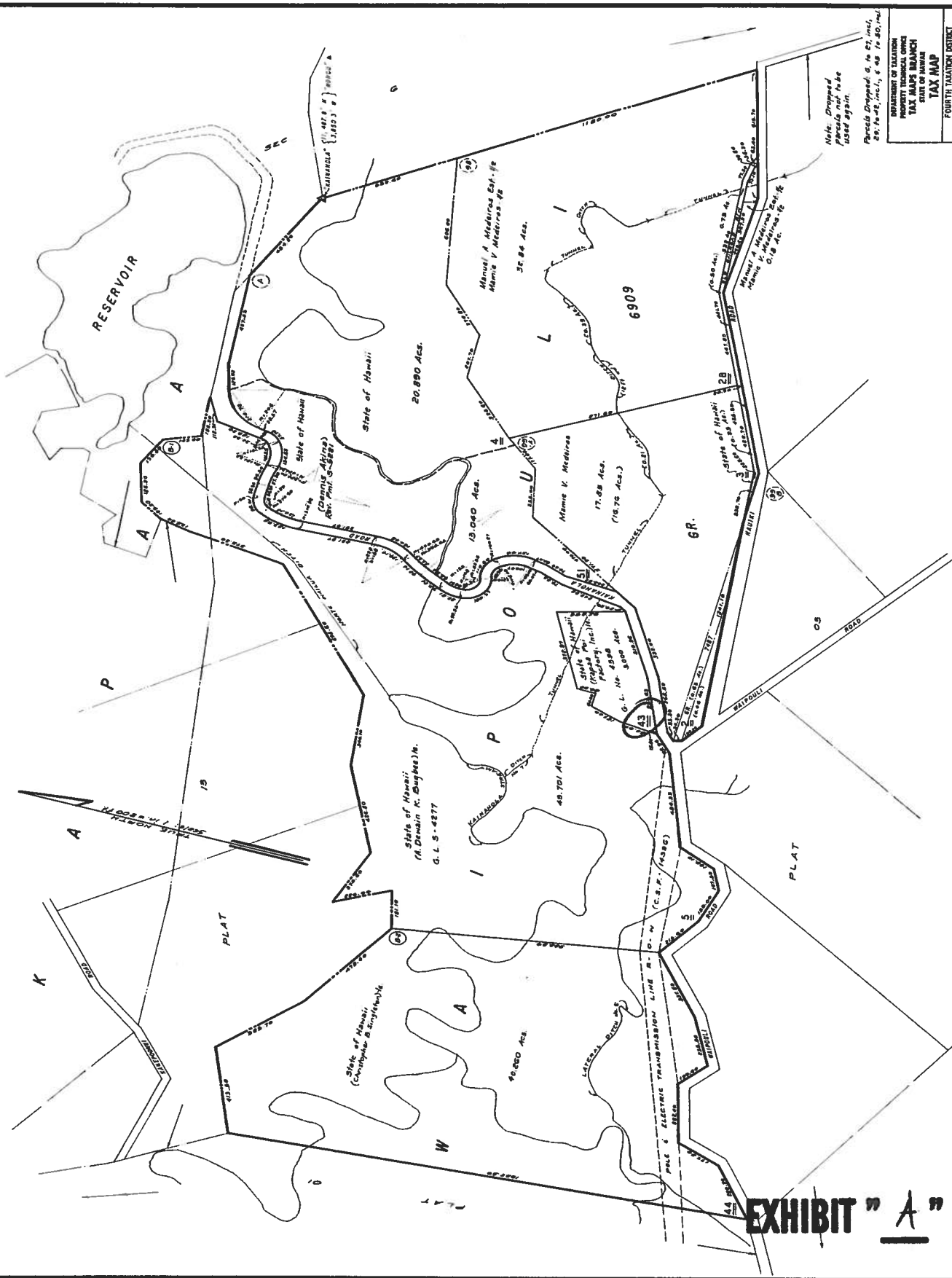


EXHIBIT "A"

DEPARTMENT OF TITLATION LAND AND NATURAL RESOURCES TAX MAPS BRANCH STATE OF HAWAII			
FOURTH QUARTER, SERIES			
ZONE	SEC.	PLAT	
4	4	04	
SCALE: 1 IN. = 200 FT.			

Note: Dropped parcels not to be used again.

Parcel Dropped, G. L. S. 4277, 28.76 Ac., incl. 8.48 Ac. 40.24 Ac.

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE




STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION


POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 25, 2010

MEMORANDUM

TO: Laura H. Thielen, Chairperson

THROUGH: Morris M. Atta, Administrator 

FROM: Cyrus C. Chen, Real Estate Appraisal Manager 

SUBJECT: Revised In-House Valuation Recommendation – Revocable Permit for Operation of a Poi Factory and Processing Facilities for other Agricultural Products

Doc No.: 08KD-089
Applicant: Kapaa Poi Factory, Inc.
Location: Waipouli, Kawaihau, Kauai, Hawaii
Land Area: 3 acres
Tax Map Key: (4) 4-4-4: 43
Char. of Use: Operation of a poi factory and processing facilities for other agricultural products

We have been requested to provide a monthly rent amount effective December 20, 2008 for the issuance of a revocable permit for operation of a poi factory and processing facilities for other agricultural products purposes on the above-referenced property. This rent amount will be included in staff's submittal to the Board for approval of this permit and will not be effective unless such approval is received. The subject was encumbered by the applicant under General Lease S-4398, which expired on December 19, 2008. Rent was \$1,660 per annum and the last reopening occurred on 12/20/98. An analysis dated February 23, 2009 was reviewed and approved which concluded market rent for the subject at \$2,300 per month. A revision is necessary to correct erroneous data given to staff in the original analysis.

The subject property contains a dwelling unit and poi factory and agricultural products processing facilities. According to County of Kauai tax office records, the two-bedroom, two-bath dwelling contains a living area of 1,100 square feet and the poi factory contains 1,870 square feet. Applicant indicates back portions of the factory were built in 1946 and the front portion built in the 1960's. The dwelling has been used as a storage facility after Hurricane Iniki. Photos from Kauai District staff reveal the structures are in average or fair condition. According

EXHIBIT "B"

to the terms of the lease, the improvements have reverted to the State upon expiration of the lease. Therefore, rent shall be applied to both the dwelling unit and poi factory facility.

Research of industrial rents in Kapaa was expanded to other surrounding areas due to the lack of available rental data in Kapaa. Rents in the Lihue and Puhi areas indicate industrial rents ranged from \$1 to \$1.40 per square foot for warehouse type space. Many of the comparables contain some office and/or showroom space. Updated research indicates warehouse rents are currently around \$0.75 per square foot. Considering the location, age and condition of the subject facility, a discount was applied to the market rent of \$0.75 sq. ft. Therefore, staff recommends a rent of \$0.50 per sq. ft. for the subject poi factory. Applying the determined rent to the subject's 1,870 square feet amounts to a rent of \$935 per month.


Discussions with the applicant indicate the house, rebuilt after the hurricane, is being used for storage. Therefore, warehouse rents were applied to the house. The warehouses researched could be used for storage or distribution. As indicated earlier, the going rate for warehouse rents is around \$0.75 per sq. ft. These warehouses are newer and in much better condition than the house. A 50% discount was applied to the market rent to account for age and condition. Therefore, a market rent of \$0.38 per sq. ft. was applied to the dwelling floor area. Applying the market rent to the subject's 1,100 square feet amounts to a rent of \$418 per month.

Therefore, as of December 20, 2008 the monthly market rent for the revocable permit to the applicant is recommended to be \$1,353 per month.

Special Assumptions and Limiting Conditions

- 1) This rental valuation estimate is for internal purposes only. This document does not take the place of an appraisal and does not constitute an appraisal that adheres to the Uniform Standards of Professional Appraisal Practice.
- 2) Neither the subject property nor any comparables were inspected by the staff appraiser.

Approved/Disapproved:



Laura H. Thielen, Chairperson



Date

cc: District Branch Files
Central Files



Dec. 22, 2008

22 10:31AM



Dec. 22, 2008

22 10:22AM

Dec. 22, 2008
22 10:20AM



Kapaa Poi Factory, Inc.
1181 Kainahola Road
Kapaa, HI 96746
(808) 822-5426

TO: Central
FROM: KDLO

No.: 9L-4398
08KD-089

APR 28 2009

MAY 5 '09

April 28, 2009

Thomas Oi
Kauai District Land Agent
306 Eiwa Street, Room 205A
Lihue, HI 96766

Dear Mr. Oi:

This letter is in response to Ref. No. 08KD-089, letter of request for a revocable permit for operation of the poi factory and processing facilities for agricultural products. The in-house valuation recommending that the rent be increased to \$2300 per month. Kapaa Poi Factory would like to propose \$400 per month for the rent.

Revenue for Kapaa Poi Factory is currently in a 5 year downward trend. Cost of sales (taros, soybeans, etc.) is at 30 percent, while rising operating expenses (wages, taxes, insurance, fuel, utilities, etc.) are 70 percent. We make ends meet every month – all expenses are current and paid in full. In 2008, we have invested our own personal monies to cover expenses due. At this time, it would be difficult to expand our operations, due to the fact that operating costs are rising, the loss of sales due to taro shortages over the past 5 years, and difficulty in finding adequate and reliable help. Currently we have 2 full time and 2 part time workers. We feel very fortunate to provide jobs for others and value the commitment of our workers.

The storage building was destroyed in Hurricane Iniki and as a result, the house is being used as a storage facility. It would be very difficult to expand the business or make any large purchases to upgrade machinery, construct a new storage, etc. because a loan would be hard to secure at this time due to the financial status of Kapaa Poi Factory and the overall national economy in general.

We do suffer a loss of sales due to the yearly taro shortages just in this past decade. In the past 3 years, we have processed kulolo every other week during the summer months. There is demand, but no taro supply, resulting in +\$50,000 loss of revenue for the past 3 years. We have raised prices twice in the past two years, but can only charge what the market will bear for a quality product.

This year we are unsure of the quantity and quality of the taro we will be buying, as we rely on the farmers to provide the taro for us. We have a special relationship with our taro farmers that has spanned over 40 years. We are 3rd generation millers dealing with 2nd generation farmers. Our finished product contains 90% taro to maintain the consistency and taste that our customers have come to expect for all their special

EXHIBIT "C"

occasions. Quantity and quality (yield) of the taro we purchase will govern our profit and loss.

Another product that we manufacture is tofu. Our sales have dropped due to the amount of tofu that is imported from the mainland. Bigger companies mass produce tofu and we, as a small company cannot compete with them. Thankfully we have loyal customers that buy our locally made product, but as economic times get more difficult, the choice between a less expensive product and our locally made product will not be so difficult for the price conscious consumer.

As a small company of only 4 employees, we process 3 times a week, deliver 2 times a week, and still find ourselves working long hours – 7 days a week. We could hire more employees, but to find staff that will come to work consistently is very difficult. So we find ourselves doing most of the work. Our schedule is very tight and driven by time constraints. If we rely on a worker and he/she doesn't show up, our schedule will be interrupted and our products will not be produced on time. Our typical work week is as follows:

Sunday	-clean taro for kulolo – start at 8:00am and finish at 3:00pm
Monday	-deliver tofu, prep for tofu– start at 6:00am and finish at 5:00pm
Tuesday	-process tofu, prep for kulolo – start at 4:00am and finish at 2:00pm
Wednesday	-process kulolo, cook, and pack - start 6:00am finish at 2:00am (Thursday morning), our break is at 7:30pm while the kulolo is cooking
Thursday	-deliver tofu and kulolo – start at 6:00am and finish at 3:00pm, then drive to Hanalei to pick up taro
Friday	-clean taro, prep for tofu – start at 8:00am and finish at 3:00pm
Saturday	- process tofu – start at 4:00am and finish at 2:00pm, then drive to the Westside to pick up taro

This is just an average week. If machinery breaks down, we scramble to fix it in time for the next processing day or we just don't process. It has happened. Also, clerical hours haven't even been included. How does this schedule work? We are fortunate to have my Mom and a couple of uncles that are invaluable workers and help us at key points in our processing schedule. They work hard and don't question anything. My Mom has been our "right hand" since my father died 11 years ago – the original "right hand". Not only does my Mom help at the factory, but she drives the children to and from activities and even cooks for us!

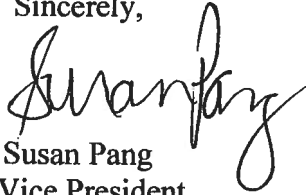
This is truly a family business in every sense. We all pull together to help each other just to get the job done. We have all made sacrifices to keep this business going. We all

know that there are many customers that request our product whether it is a gift for a special occasion, a baby luau, a wedding, and even funerals.

To raise our rent to \$2300 a month based on the facts that you gathered, would not take into account the actual reality that Kapaa Poi Factory faces on a daily basis to provide a quality product to our customers. Again, please consider this request for \$400 a month rent.

If you have any questions, please call me at 651-8255.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Pang", written in a cursive style.

Susan Pang
Vice President
Kapaa Poi Factory, Inc.

Kapaa Poi Factory, Inc.
1181 Kainahola Road
Kapaa, Hawaii 96746
(808) 822-5426 / 651-8255

December 29, 2009

Mr. Tommy Oi
District Land Agent
Department of Land and Natural Resources
Land Division
3060 Eiwa Street, Room 208
Lihue, Hawaii 96766

Dear Tommy:

In response to submittal, Ref. No.: 08KD-089, dtd 12/21/09, Kapaa Poi formally requests that consideration to be given on the following items. Furthermore, we feel the need to address our objection and concerns on this matter in writing and also in person at the next Land Board Usage meeting.

- 1) In regards to the rent increase proposed by the revocable permit, Kapaa Poi acknowledges an increase may be in order; however **we do object** to the drastic character of the increase imposed. Please bear in mind the proposed increase is not two-fold, three fold or even a hundred-fold, the increase is of 1667 %!
- 2) Kapaa Poi further recognizes the market valuation methodology utilized in the assessment, yet questions whether the age and condition of the building have been fully considered. The factory itself is 50+years in age, where piecemeal improvements have been performed. We feel that more modern commercial/light industrial buildings may merit that assigned value, but certainly our building does not. Secondly, the housing unit on the property has not be inhabited for years, and is in use for storage.

EXHIBIT "D"

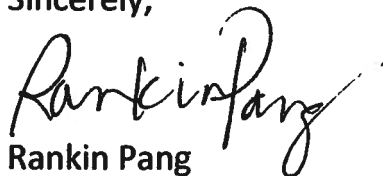
3) Kapaa Poi strenuously objects to the retroactive nature of back rent to be assessed upon board decisions. We find that it is unduly sudden, excessive and punitive. Had such intentions been known by us, we certainly would have taken other actions.

4) Kapaa Poi is aware of the state's financial problems, and we are experiencing them as well. Kapaa Poi is more than willing to work to compromise, however, the viability of the company is paramount.

5) Kapaa Poi has historically met all of its state obligations. We have made our lease payments and bond issues in a timely fashion. We have responded to calls for documentation, inspections and permits. Given the opportunity, we will gladly continue.

Finally, Kapaa Poi is a small family business, literally, a mom and pop business. We manufacture products for the people of Hawaii, using exclusively Kauai Taro, bought and transported from local farmers, sugar from Maui and other ingredients and materials purchased from Hawaii companies. We have serviced Kauai and Oahu for decades. Kapaa Poi is the only manufacturer of Tofu on Kauai, and the largest legitimate (ie.; permitted and inspected) manufacturer of Kulolo in the state. As our fathers and uncles before us, we make and deliver our products personally, and make and maintain business on a handshake. If given the opportunity, we will gladly continue.

Sincerely,

A handwritten signature in black ink, appearing to read "Rankin Pang", written in a cursive, flowing style.

Rankin Pang

President

Kapaa Poi Factory